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C O N F I D E N T I A L SECTION 01 OF 02 TOKYO 002309

SIPDIS

DEPARTMENT FOR GTIP: CHRISTINE CHAN-DOWNER

E.O. 12958: DECL: 10/06/2019

TAGS: [ELAB](#) [KTIP](#) [PGOV](#) [PHUM](#) [JA](#)

SUBJECT: ON THE COMPREHENSIVENESS OF JAPAN'S TIP LAWS AND
THE MYSTERY OF THE LOW NUMBER OF LABOR EXPLOITATION CASES

REF: TOKYO 01528

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Classified By: DCM James P Zumwalt per 1.4 (b, d)

¶1. (C) SUMMARY: A consensus of Japanese legal scholars believes that Japan's set of anti-TIP laws prohibits "recruitment through fraudulent or deceptive means." (NOTE: This crime is thought to be closely linked to forced labor in which a recruiter knowingly, and with intent to fraud, uses materially false or fraudulent representations to recruit workers. END NOTE) Part of the explanation for the low level of labor TIP cases in Japan appears to be that the normal response of the Labor Standard Inspection Bodies -under whose jurisdiction possible labor trafficking would initially fall- is to provide guidance to employers so as to try and resolve the problem at the site. Only rarely is a case referred on to prosecutors. END SUMMARY.

2.(C) The State Department Annual Trafficking in Persons Report's assertion that Japan's set of anti-TIP laws is not comprehensive has been a point of irritation with the Government of Japan. As Hiroki Matsui, Deputy Director of MOFA's International Organized Crime Division said, "In 2004 the Inter-Ministerial Liaison Committee adopted the definition of TIP given in Article 3 of the Protocol, and we amended our laws accordingly. Why would we miss such an obvious and major form of trafficking?" The wording of the annual TIP Report has changed on this issue. The 2007 and 2009 reports stated: "It is unclear if the existing legal framework is sufficiently comprehensive to criminalize all severe forms of trafficking in persons." The 2008 Report recommended that Japan, "criminalize recruitment through fraudulent or deceptive means."

¶3. (C) In an effort to clear up this issue post provided copies in English and Japanese of Japan's set of anti-TIP laws to three lawyers: Kanae Doi, head of Human Rights Watch Japan, Makoto Teranaka, head of Amnesty International Japan, and Yoko Yoshida of Nichibenren (The Japan Federation of Bar Associations); and three law professors: Colin Jones, Professor of Law at Doshisha University, Shuichi Furuya, Professor of Law at Waseda University, and Yasunobu Sato, Professor of Law at Tokyo University. The six were asked if

they believed there was a loophole in Japan's set of anti-TIP laws which allowed "recruitment through fraudulent or deceptive means." All six stated that in their opinion the laws are comprehensive and no such loophole exists. Kanae Doi did however qualify this by adding, "if however a suspect only engages in recruitment, but in fact the victim is not trafficked, the suspect cannot be punished." She explained by saying that the Japanese Penal Code clearly makes a recruiter punishable as an accomplice, or as aiding or abetting the principal suspect. To trigger criminal charges against the recruiter however, the criminal act of trafficking has to take place.

14. (C) The question of a possible loophole was also discussed with Judge Jun Shimato. (NOTE: Protect source. END NOTE). Judge Shimato previously served in the Ministry of Justice as the attorney in charge of TIP issues. As Judge Shimato described the situation, most labor or employment problems are investigated by the Labor Standard Inspection Bodies, not by judicial or police authorities. The standard operating procedure for these Inspection Bodies is to give guidance to employers to try and prevent a deterioration of the situation. "These Labor Standard Inspection Bodies focus on possible labor exploitation, not on the act of bringing employees under the control of the employers. In other words, the act of trafficking itself is beyond the jurisdiction of the Ministry of Health Labor and Welfare (MHLW) and the Employment Security Bureau and Labor Standards Bureau."

15. (C) Asked to confirm this statement Matsui of MOFA said, "Yes, this is basically true. The severest cases are referred for possible prosecution, but Japanese prosecutors only prosecute cases that they are sure they can win. These labor

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trafficking cases are difficult." Asked why, he added, "In the case of possible Chinese labor trafficking for example we are trying to coordinate with Chinese authorities to arrest the brokers, but it is not easy." Chang Lin a Legal Attach at the Chinese Embassy in Tokyo confirmed that the two governments were trying to cooperate on this issue.

"However," added Lin, "what the brokers are doing, even though it puts the workers they send to Japan in debt, is legal under Chinese law."

ZUMWALT

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(DPJ), the Social Democratic Party (SDP), and the People's New Party (PNP) agreed at their meeting on Oct. 1 to hold the first meeting of the three parties' secretaries general since the start of the new administration next week, at the earliest, to coordinate policies among the coalition parties. The SDP has long sought the convening of this meeting, but no meeting has been held because DPJ Secretary General Ichiro Ozawa had ignored this request. This problem has given rise to discord among the ruling parties. The SDP and the PNP have been unhappy about their weak voice in the coalition, and their position on this issue is very different from the DPJ, which stands for the unification of policymaking in the cabinet. This problem has become a source of trouble in the new administration.

SDP Secretary General Yasumasa Shigeno expressed his displeasure at a news conference on the morning of Oct. 1: "We have been making the request but they have not even decided when to hold the meeting. I wonder if that is appropriate." He had also called DPJ Diet Affairs Committee Chairman Kenji Yamaoka to press him on this issue, saying: "There used to be a regular meeting. Why is it not possible to hold it now?" Yamaoka finally agreed to a meeting of Diet Affairs Committee chairmen in the late afternoon of Oct. 1, where they decided on holding the meeting of secretaries general of the three parties.

Later, the SDP also held a meeting of the SDP and PNP secretaries general and policy chiefs where they agreed to demand a mechanism

that will facilitate the two parties' involvement in policymaking. Shigeno complained at his news conference that, "The cabinet right now was designed on the assumption of a DPJ administration."

In addition to the notion of unification of policymaking in the cabinet, Ozawa has also indicated that the "official channel of communication among the parties is the Diet Affairs Committees." He is not keen on holding meetings of the secretaries general. On the other hand, the SDP takes a completely opposite position on this, asserting that consultations should take place not only in the cabinet, but also among political parties. Torn between the two sides, Yamaoka has lamented that, "The party leaders are members of the administration. Their views can be expressed inside the government." Some DPJ members have voiced a cynic view on the SDP, asserting that "the new administration is, in reality, a single-party government by the DPJ."

(3) Kamei may have patched up his relationship with bankers

MAINICHI (Page 7) (Full)
October 2, 2009

State Minister for Financial Affairs and Postal Reform Shizuka Kamei met yesterday afternoon with Katsunori Nagayasu, the chairman of the Japan Bankers Association (JBA) and the president of Bank of Mitsubishi-Tokyo UFJ. Kamei had earlier announced his stance of granting a moratorium on the repayments of loans extended to small and medium-size businesses or housing loans. The JBA has opposed this proposal. However, Kamei and the JBA reportedly reached the agreement yesterday that financing small and medium-size businesses is important, as Nagayasu put it.

They have softened their confrontational stance because Kamei indicated a view denying the uniform introduction of a moratorium, to which the JBA announced its opposition, saying, "I have never said that I would nullify all debtor-creditor relationships." There

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is also an idea being floated from within the government for making up for moratorium-incurred losses the banks could sustain, so it seems that the bankers may find it easier to cooperate on the government policy.

Kamei revealed yesterday that he would invite JBA members to a working team tasked with drafting a relevant bill so as to reflect lenders' views. A JBA executive said, "We will properly convey our views."

(4) Interview with LDP President Tanigaki: Shadow cabinet to take shape before extraordinary Diet session

MAINICHI (Page 5) (Full)
October 2, 2009

Ryuko Tadokoro

Liberal Democratic Party (LDP) President Sadakazu Tanigaki gave an interview to Mainichi Shimbun and other media outlets on Oct. 1. Following are the main points of the interview:

Q: Will you seek the early convening of the extraordinary Diet session?

Tanigaki: The new administration has put forward a new direction for many issues. The people have a strong interest, so (Prime Minister Yukio Hatoyama) should deliver a policy speech. I think it is taking a bit too long.

Q: Do you expect to form a shadow cabinet?

Tanigaki: As an opposition party, policy research activities and the management of Diet affairs tend to be linked, so it is necessary to integrate the policy chiefs and the directors of the Diet committees. I would like to decide on a framework and see to it that (the shadow cabinet) takes shape before the extraordinary Diet session is convened.

Q: What is your strategy for the House of Councillors by-elections in Kanagawa and Shizuoka?

Tanigaki: Naturally, I will go and campaign for our candidates. I would also like to request New Komeito's support shortly.

Q: Will you implement a bold replacement of candidates for the Upper House election next year?

Tanigaki: We will look at the individual cases, and if there are constituencies where it will be difficult for the candidate to win, replacement with another candidate who can win will be necessary. That is a possibility even for incumbent Upper House members.

Q: What will you do about hereditary Diet seats?

Tanigaki: We need to debate once again what is meant by "hereditary." I am not saying we should lift (the restrictions), but there is a need to review the manifesto (campaign pledges) for the recent House of Representatives election drastically.

Q: What is the difference between Mr Tanigaki's "kizuna (bonds)" and Prime Minister Hatoyama's "yuai (fraternity)"?

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Tanigaki: Foreign policy needs to be strategic and pragmatic, so I wonder what is "yuai diplomacy." The Democratic Party of Japan favors a big government, but I think basically, we should value self-help. While the slogans may appear to be similar, the meaning is very different.

(5) Halting refueling mission to impact anti-terror operations:
Roughhead

SANKEI (Page 8) (Full)
October 2, 2009

U.S. Chief of Naval Operations Roughhead, the U.S. Navy's top officer, indicated in his press remarks on Sept. 30 that if the Japanese government calls off the Maritime Self-Defense Force's refueling mission in the Indian Ocean, it would affect Operation Enduring Freedom, a seaborne anti-terror campaign. Roughhead said naval vessels currently refueled by MSDF supply ships at sea would have to return to port to refuel. He also pointed out that "countries with small naval forces would feel the impact" in particular.

(6) New legislation likely for continued refueling mission:
Nagashima

AKAHATA (Page 2) (Abridged)
October 2, 2009

Akihisa Nagashima, one of the Defense Ministry's two parliamentary secretaries for defense, has indicated that the government would introduce a bill to the Diet for new legislation allowing Japan to continue the Maritime Self-Defense Force's refueling mission in the Indian Ocean after the new Antiterrorism Special Measures Law expires (in January next year). "It's even likely to be extended in a complicated form," Nagashima said in a symposium held in Tokyo yesterday.

The Democratic Party of Japan (DPJ) has reiterated that its government would "not simply extend" the refueling mission. However, this is the first time that a government official has referred to the possibility of presenting a new legislative measure.

Concerning the issue of relocating the U.S. Marine Corps' Futenma Air Station in Okinawa, Nagashima indicated that the currently planned construction of a new base in a coastal area of Camp Schwab has not been precluded. "The DPJ's position is to review the realignment of U.S. forces in Japan and the presence of U.S. military bases in Japan," Nagashima said. He added: "Some people say things like this, 'In the beginning, there was a decision to move it

out of Okinawa Prefecture or Japan.' But that is not the case."

(7) Kitazawa: Nothing decided yet on Futenma's 'off-prefecture' relocation

MAINICHI (Online) (Full)
October 2, 2009 (12:32)

Chief Cabinet Secretary Hirofumi Hirano, Foreign Minister Katsuya Okada, Defense Minister Toshimi Kitazawa, and State Minister for Okinawa and Northern Territories Seiji Maehara met this morning at the prime minister's office to discuss the pending issue of

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relocating the U.S. Marine Corps' Futenma Air Station in Ginowan, Okinawa Prefecture. "We have no time, so we will exchange information frequently," Kitazawa told reporters after the meeting. "We have not concurred yet on anything about relocating the airfield's off-prefecture relocation," he added.

The question is whether the government will go ahead with the currently planned relocation of Futenma airfield to a coastal area of Camp Schwab in Okinawa Prefecture's northern coastal city of Nago without modifying the intergovernmental agreement between Japan and the United States on the Futenma relocation-or otherwise the government will explore the possibility of such options as modifying the current relocation plan to move Futenma airfield out of Okinawa Prefecture or Japan. The government, however, has yet to come up with any clear-cut course of action on this question, so the four cabinet ministers met to coordinate their views within the government.

In the meeting, Okada reported on his recent visit to the United States. Kitazawa also reported on his Sept. 25-26 visit to Okinawa and his exchange of views with Okinawa Gov. Hirokazu Nakaima and Nago Mayor Yoshikazu Shimabukuro. In the meantime, the Foreign Ministry and the Defense Ministry are now in the process of looking into the current Futenma relocation plan. The four ministers discussed this matter, too.

(8) Governor says Futenma assessment is insufficient, Dugons, typhoons not discussed

OKINAWA TIMES (Page 2) (Full)
October 2, 2009

Okinawa Governor Hirokazu Nakaima attended the Okinawa prefectural assembly's regular September meeting that was held on Oct. 1. During a question-and-answer session in the meeting, the governor indicated that the survey is insufficient regarding the preparatory documents on the environmental impact assessment that must be conducted ahead of relocating the U.S. Marine Corps' Futenma Air Station to the coastal area of Camp Schwab in the city of Nago. The governor said: "Dugons have not been surveyed for multiple years and the survey has not been conducted during typhoons. I want to express my views based on the council's report." This was in response to a question from Kyoko Higa (of the Okinawa Social Mass Party).

The governor is scheduled to receive the prefectural examination council's report on Oct. 2 and to present his views to the Okinawa Defense Bureau on Oct. 13.

"(The preparatory documents) do not fully cater to my views on the notice specifying the outline (of the environmental impact assessment)," the governor said. He also pointed out the absence of concrete plans to procure specific materials for reclaiming land. As examples of what is missing, the governor indicated the sources of 17 million cubic meters of earth and sand -- equivalent to 12 years of the materials extracted in the prefecture -- are not specified in addition to the dugon and typhoon surveys.

Okinawa Prefecture's Cultural and Environmental Affairs Department Director Kenji Chinen indicated that the governor would consider suggesting the need to forecast again and assess the impact of aircraft noise during their flights between the envisaged replacement facility and training ranges. The governor reiterated

his view to conditionally accept (Futenma's) relocation within the prefecture, saying, "If a relocation site is not found within the prefecture, chances are that (Futenma) will permanently remain where it is." He continued: "If (the Democratic Party of Japan-led government) carries things out in accordance with its manifesto, I have no intention of adhering to the within-Okinawa option in defiance of the popular will in Okinawa. I want to know what exactly the government is going to do."

(9) Environmental impact assessment panel for Futenma replacement facility to submit report today

OKINAWA TIMES (Page 2) (Full)
October 2, 2009

Okinawa Prefecture's Environmental Assessment Council, chaired by Masamitsu Tsukayama, will submit to Okinawa Governor Hirokazu Nakaima today a report with recommendations on a document concerning procedures for conducting the environmental impact assessment of the site for constructing an alternative facility of the U.S. Marine Corps' Futenma Air Station. The report will call on the prefectural government to conduct once again the necessary investigations and make accurate predictions and a substantial assessment, such as a survey of dugongs that will last for several years.

The Okinawa Defense Bureau, which placed the order, has reached this conclusion: "There will be little impact in general." But assuming that the environmental impact is considered to be extremely great, the council intends to note in its report that if it is impossible to minimize the negative impact even by taking measures to protect the environment, the bureau should look into every possibility, including a cancellation of or changes in the project."

The prefectural government will submit to the central government by the legally set deadline, Oct. 13, a proposal from the governor based on the council's report and the opinions already submitted by the Nago mayor and the Ginoza mayor, as well as the opinions of local residents. The Environmental Assessment Law stipulates that the organization placing the order should take the governor's opinion into account. Attention will be focused on how public opinion will be reflected in the governor's proposal.

(10) Ten F-22 fighters temporarily deployed at Kadena leave for home base in U.S.

OKINAWA TIMES (Page 2) (Full)
October 2, 2009

Kadena

Of the 12 F-22 Raptors, America's most sophisticated fighters, temporarily deployed at U.S. Kadena Air Base since late May, 10 left the base yesterday morning to return to their home base of Langley Air Force Base in Virginia. According to the press office at the Kadena base, one of the two will remain at the Kadena base for maintenance and the other for to serve as a wingman, but they will also soon return to their home base.

Six fighters left the Kadena base at 8:00 a.m. and five at 9:20 a.m. One of them returned to the base at around 10:40 a.m. According to the noise levels measured by the Kadena Municipal Government, the highest level at the time when the fighters left the base was 100.8

decibels at 9:22 a.m. This is the third deployment of F-22 fighters at Kadena Air Base.

(11) Which parent is guilty of snatching children in Fukuoka case? Difference between Japanese and U.S. laws complicates solution

ASAHI (Page 38) (Full)
October 2, 2009

Hikaru Tanaka in New York

The U.S. media have been covering the case of an American father who was arrested on the charge of abduction of a minor after he attempted to reclaim the children whom his ex-wife had taken from the U.S. to her parents' home in Fukuoka Prefecture. The case has aroused widespread interest. Taking children out of the United States without the consent of the other parent is a crime in America, so Americans support the ex-husband. Behind this case is the difference between Japanese and U.S. laws covering failed international marriages.

One factor behind this case is the Hague Treaty. ASTERISK CNN reported the case prominently over several days and claimed "an act of reclaiming abducted family members is considered a crime in Japan" and "diplomatic efforts are necessary to obtain his (the father's) release." The network used the word "abduction."

Arrested in this case was a 38-year-old Tennessee man. According to the Yanagawa Police Station of the Fukuoka Prefectural Police, on the morning of September 28 the suspect forcibly grabbed his son, 8, and daughter, 6, who were on their way to school with his ex-wife, on a street in Yanagawa City, dragged them into a car, and drove away. The ex-wife called the police. Police officers later spotted the man when he arrived at the U.S. Consulate General in Fukuoka City and arrested him. The police indicted the man on the charge of abduction of a minor on the morning of September 30. He is currently being held in detention. He denied the charge, claiming, "I only wanted to see my children."

According to a lawyer in Tennessee who has represented the man since April, the couple divorced in January. Both father and mother have parental rights and they agreed that the children would live with their mother in a house near the man's home. The man remarried an American woman. However, without his knowledge the ex-wife took the children to Japan on August 13. The lawyer argued "Japan should not protect the mother, who has violated U.S. law."

On the other hand, the lawyer who represented the mother during the divorce proceedings, while admitting "we cannot condone an act not in accordance with U.S. law," explained "the mother had long been troubled by the man's domineering attitude. She did not wish to live with him as part of her family." The couple married in Japan and went to the U.S. in June 2008. The man showed his wife divorce papers the day after they arrived in the U.S. Apparently, the children, who had lived most of their lives in Japan, also had a hard time getting used to life in America.

In response to queries, the U.S. Department of State said, "We cannot comment on specific cases, but we are aware of this matter." It also commented that: "Japan is an important partner and a close ally. However, our opinions differ on the question of taking away children. The parent left behind in the U.S. suffers from serious

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psychological stress, being unable to take back the children."

On the other hand, the Fukuoka Police claim "forcibly taking away children is in itself a crime. The divorce and past events are unrelated to this case."

ASTERISK The Hague Treaty stipulates that one parent without the permission of the other cannot take children out of their country of residence after an international marriage breaks up. The treaty also provides for "right of visitation" across national boundaries. Over 80 countries, including the U.S. and Canada, are signatories to this treaty.

Since Japan is not a signatory, it is extremely difficult for a foreign parent to take back his/her children once the Japanese parent returns to Japan with them. There have been numerous instances of trouble, and Western countries have been increasingly pressuring Japan to sign the treaty.

(Corrected copy) First reference by high-ranking US Navy officer to

impact of refueling mission's suspension: it would affect anti-terrorism strategy

TOKYO SHIMBUN (Page 2) (Full)
Evening, October 1, 2009

Iwata in Washington

At a press conference on Sept. 30, U.S. Navy Admiral Gary Roughead said that a suspension of the Maritime Self-Defense Force's ongoing refueling mission in the Indian Ocean "would affect the Maritime Interception Operation (aimed to prevent the moves of terrorists, weapons and drugs by ship as anti-terrorism strategy)."

It was the first time a high-ranking U.S. Navy officer referred to the expected impact of the suspension of Japan's refueling mission. But Roughead added that it is the Japanese government who decides whether or not the mission should be continued.

Roughead emphasized: "I have been grateful to Japan for its contribution, and many other countries have also highly evaluated it." He added: "(If Japan discontinues the refueling mission,) it would affect the strategies of the countries that have dispatched small naval forces."

The admiral explained the termination would affect the anti-terror mission because warships that have been refueled by Japan's supply ships will have to return to port for refueling, "and their absence will inevitably have an impact on strategy."

ROOS